UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NIVIA D.,

Plaintiff,

v. 5:21-CV-0392 (ML)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES: OF COUNSEL:

OLINSKY LAW GROUP
Counsel for the Plaintiff
250 South Clinton Street-Suite 210
Syracuse, New York 13202

CAEDEN SEHESTED, ESQ.

SOCIAL SECURITY ADMINISTRATION
Counsel for the Defendant
J.F.K. Federal Building, Room 625
15 New Sudbury Street
Boston, Massachusetts 02203

MICHAEL L. HENRY, ESQ.
Special Assistant U.S. Attorney

MIROSLAV LOVRIC, United States Magistrate Judge

ORDER

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.[1] Oral

[1] This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

argument was heard in connection with those motions on September 20, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

ORDERED as follows:

1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 18) is DENIED.

2) Defendant's motion for judgment on the pleadings (Dkt. No. 21) is GRANTED.

3) The Commissioner's decision denying Plaintiff Social Security benefits is AFFIRMED.

4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.

5) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: September 22, 2022
Binghamton, New York

Miroslav Lovric
United States Magistrate Judge
Northern District of New York

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

_____

D

vs. 5:21-CV-0392

COMMISSIONER OF SOCIAL SECURITY

_____

DECISION AND ORDER

September 20, 2022

The HONORABLE MIROSLAV LOVRIC,

DISTRICT MAGISTRATE JUDGE

A P P E A R A N C E S

For Plaintiff: CAEDEN SEHESTED, ESQ.

For Defendant: MICHAEL HENRY, ESQ.

Ruth I. Lynch, RPR, RMR, NYSRCR
Official United States Court Reporter
Binghamton, New York 13901

THE COURT: All right. The Court's going to begin its analysis and decision as follows:

Plaintiff, on behalf of her minor son, the minor son's initials are L.A.L.D., and the minor son will be referred to by the Court as the claimant. So the plaintiff, on behalf of her minor son L.A.L.D., who is the claimant, has commenced this proceeding pursuant to Title 42 United States Code Sections 405(g) and 1383(c) to challenge the adverse determination by the Commissioner of Social Security finding that claimant was not disabled at the relevant times and therefore ineligible for the benefits sought. And by way of background the Court notes as follows:

The claimant was born in 2006. Claimant is currently approximately 15 years of age. Claimant was approximately 7 years of age at the alleged onset of his disability on August 1st of 2014. Claimant lives with plaintiff, his father, and two older brothers. Plaintiff testified that she did not work and that claimant's father was on disability.

Procedurally, the Court notes as follows:

The plaintiff applied for Title XVI benefits for the -- on behalf, I should say, of the claimant on December 4th of 2018 alleging an onset date of August 1, 2014. In support of her claim for disability benefits, plaintiff claims claimant's disability is based on a brain

tumor, migraines, asthma, ADHD, a learning disorder, and acid reflux.

Administrative Law Judge David Romeo conducted a hearing on June 3rd of 2020 to address plaintiff's application for benefits on behalf of the claimant minor. ALJ Romeo issued an unfavorable decision on July 9th of 2020. That became a final determination of the agency on February 2nd of 2021, when the Social Security Administration Appeals Council denied plaintiff's application on behalf of the claimant for review.

This action was commenced on April 3rd of 2021, and it is timely.

In his decision, ALJ Romeo applied the three-step test for determining whether a minor has been under a disability.

At step one, the ALJ concluded that claimant had not engaged in substantial gainful activity since November 27 of 2018, that being the application date.

At step two, the ALJ concluded that claimant suffers from severe impairments, specifically neurocognitive and neurodevelopment disorders; migraine headaches; asthma; a depressive disorder; attention deficit hyperactivity disorder, also known as ADHD; mild intellectual disorder; and cerebellar tonsillar ectopia.

At step three, ALJ Romeo concluded that claimant's

conditions do not meet or medically equal a severity of one of the listed impairments in 20 CFR Sections 416.924, 416.925, and 416.926. More specifically, the ALJ focused on the following listings: Listing 103.03 dealing with asthma; 11.02 dealing with neurological childhood seizures; 112.02 dealing with neurocognitive disorders, childhood; listing 112.04 dealing with depressive, bipolar, and related disorders, childhood; listing 112.05 dealing with intellectual disorder, childhood; and listing 112.11 dealing with neurodevelopmental disorders, childhood.

For listings 112.02 and 112.04 and 112.05, as well as 112.11, the ALJ considered whether paragraph B or paragraph Y criteria were satisfied for the mental impairments. With respect to the paragraph B criteria, the ALJ found that claimant has, one, a moderate limitation in understanding, remembering, or applying information; two, a moderate limitation in interacting with others; three, a moderate limitation with concentrating, persisting, and maintaining pace; and, four, a moderate limitation adapting or managing oneself. In addition, the ALJ found that claimant does not have an impairment or combination of impairments that functionally equals the severity of listings at 20 CFR sections 416.924(d) and 416.926a. More specifically, the ALJ found that the claimant, one, has less than marked limitation in acquiring and using information;

two, has less than marked limitation in attending and completing tasks; three, has less than marked limitation in interacting and relating with others; four, has no limitation in moving about and manipulating objects; five, has less than marked limitation in the ability to care for himself; and, six, has less than marked limitation in health and physical well-being. As a result, the ALJ found that claimant was not disabled as defined in the Social Security Act since November 27 of 2018, the date the application was filed.

Now, as the parties know, this Court's functional role in this case is limited and extremely deferential. I must determine whether correct legal principles were applied and whether the determination is supported by substantial evidence, defined as such relevant evidence as a reasonable mind would find sufficient to support a conclusion. As the Second Circuit noted in the case of Brault V. Social Security Administration Commissioner, that's found at 683 F.3d 443, a 2012 case, the Circuit noted that this standard is demanding, more so than the clearly erroneous standard. The Court noted in Brault that once there is a finding of fact, that fact can be rejected only if a reasonable fact-finder would have to conclude otherwise.

Now, on appeal, plaintiff raises two contentions in this appeal before this Court. First, plaintiff argues

that the ALJ erred in evaluating the opinion evidence according to 20 CFR Section 416.920c. Secondly, plaintiff also argues that claimant's impairment does meet listing 112.04 dealing with depressive, bipolar, and related disorders, childhood.

The Court begins its analysis by stating as follows: For the reasons set forth in defendant's brief, I find that substantial evidence supports the ALJ's evaluation of the opinion evidence. Plaintiff focused her arguments on the opinion of Dr. Quinones-Guzman so the Court focuses its analysis and decision there as well. This Court notes the following:

This Court has held that, quote, while a reviewing court may not affirm the Commissioner's decision based on an impermissible post-hoc rationalization, it may affirm where the ALJ's consideration of the relevant factors can be gleaned from the ALJ's decision as a whole. For this proposition the Court cites John L.M. versus Kijakazi, that's found at 21-CV-368. That's a 2022 case. It can be found at West Law 3500187 at page 2. And that is a Northern District New York case issued by Chief Judge Sannes on August 18th of 2022. And therein Judge Sannes cites the case of Ricky L. versus Commissioner of Social Security, 20-CV-7102, and that's a 2022 case. That can be found at West Law 2306965 at page 4. And that is a Western District

New York June 27th of 2022 case.

In this case the ALJ's evaluation of Dr. Quinones-Guzman's opinion considered the supportability and consistency factors. Although the ALJ did not elaborate on this point specifically in his decision of Dr. Quinones-Guzman's opinion, the ALJ's stated that he -- the ALJ -- excuse me, the ALJ stated that he found the opinion of Dr. Quinones-Guzman not persuasive because the record documented, quote, few positive clinical findings and was not consistent with the objective medical evidence, the school records and reports, and the claimant's functioning in other reports of treatment, end quote. Indeed, when viewing the ALJ's decision as a whole, it is clear that the ALJ noted the inconsistency of Dr. Quinones-Guzman's opined limitations with moving about and manipulating objects. More specifically the Court notes that the ALJ indicated as follows:

The ALJ cited claimant's treatment records with Dr. Quinones-Guzman indicating that he liked to be active at school, playing basketball, but primarily played PlayStation at home. See docket number 11, attachment 2 at 29, that's transcript page 28, citing also docket number 11, attachment 11 at 89, transcript page 1114. And the ALJ also cited claimant's treatment record with Dr. Quinones-Guzman indicating that claimant had, quote, no restrictions in

physical activity, end quote. See docket number 11, attachment 2 at 29, transcript page 28, therein citing docket number 11, attachment 11 at 65, transcript page 1090.

As defendant asserts, the ALJ did not need to reproduce his discussion of the normal clinical findings in the paragraph where he discounted Dr. Quinones-Guzman's opinion. Instead, the ALJ's opinion included numerous other benign findings including, inter alia, Dr. Noia's finding that claimant showed no difficulty understanding and following simple directions, despite a mild intellectual disability; also notations in the record that claimant made progress in reading and math and was able to follow simple explicit instructions despite poor class attendance; and claimant's recent report cards and IEPs reflecting that he was a pleasure to have in class, was friendly with adults and peers, and that his behavior improved.

For each of these reasons the Court is able to glean the ALJ's rationale for not adopting Dr. Quinones-Guzman's opined limitations. Although plaintiff highlights evidence in the record that supports Dr. Quinones-Guzman's opinion, it is not the position of this Court, this reviewing Court, I should say, to reweigh the evidence. In addition, for the reasons set forth herein, I reject plaintiff's argument that claimant meets listing 112.04(B), because the ALJ supportably rejected the

opinion of Dr. Quinones-Guzman.

The Court notes as follows: Moreover, as set forth in defendant's brief, even assuming arguendo that the ALJ had adopted Dr. Momot-Baker's entire assessment, plaintiff still would not have established marked limitations in at least two functional equivalence domains or two paragraph B domains. Further, as set forth in defendant's brief, plaintiff does not offer any support for her assertion that Dr. Noia's TONI-4 quotient of 64 equates to a marked limitation in acquiring and using information or that claimant's delayed speech and language skills equated to a marked limitation in interacting with others.

Based on this analysis and for the following -- and for the reasons that I just stated, therefore plaintiff's motion for judgment on the pleadings is denied. Defendant's motion for judgment on the pleadings is granted. Plaintiff's complaint is hereby dismissed. And the Commissioner's decision denying plaintiff benefits is hereby affirmed.

This constitutes the analysis and decision of this Court.

- - - - -